

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

MICHAEL GONZALEZ, JR., ) NO. CV 12-10261 SS  
                            )  
                            Plaintiff, )  
                            )  
                            v.                 )  
                            )  
CAROLYN W. COLVIN,         )  
Commissioner of the Social )  
Security Administration, )  
                            )  
                            Defendant. )  
                            )  
\_\_\_\_\_ )

**MEMORANDUM DECISION AND ORDER**

I.

## INTRODUCTION

Michael Gonzalez, Jr. ("Plaintiff") seeks review of the final decision of the Commissioner of the Social Security Administration (the "Commissioner" or the "Agency") denying him disability benefits. The parties consented, pursuant to 28 U.S.C. § 636(c), to the jurisdiction of the undersigned United States Magistrate Judge. For the reasons stated below, the decision of the Commissioner is AFFIRMED.

II.

## **PROCEDURAL HISTORY**

4 Plaintiff Michael Gonzalez Jr. filed an application for Title II  
5 Disability Insurance Benefits on January 20, 2010. (AR 156-57)  
6 Plaintiff alleged a disability onset date of September 1, 2007. (AR  
7 156). The Agency denied Plaintiff's application on May 18, 2010. (AR  
8 96). Plaintiff requested a hearing before an Administrative Law Judge  
9 ("ALJ") on July 15, 2010. (AR 102). Plaintiff testified at a hearing  
10 held before ALJ Lawrence D. Wheeler on April 7, 2011. (AR 20-39). On  
11 May 25, 2011, the ALJ issued a decision denying benefits. (*Id.*).  
12 Plaintiff then requested review of the ALJ's decision, which the Appeals  
13 Council denied on October 12, 2012. (AR 1-6). Plaintiff filed the  
14 instant action on December 3, 2012.

III.

## **FACTUAL BACKGROUND**

Plaintiff was born on May 15, 1970. (AR 201). Plaintiff completed twelfth grade and some college and obtained a contractor's license. (AR 184, 309). Plaintiff then worked as a general contractor until 2007. (AR 309). Plaintiff has past relevant work as a general contractor and a foreman. (AR 37-38). From 2007 to 2010, Plaintiff saw a number of doctors for both a left Achilles tendon injury, foot pain and mental health problems. (AR 246-391).

1       **A. Medical History and Treating Physicians' Opinions**

2

3       **1. Physical Condition**

4

5       On June 5, 2007, Plaintiff visited the El Segundo Family Medical  
6 Group for left foot pain. (AR 251). Plaintiff injured his Achilles  
7 Tendon in a snowboarding accident in 2006 and had surgery, but alleged  
8 "pain for a long time". (AR 251, 376).

9

10      Plaintiff had a podiatry evaluation with Michael Bloch, DPM, on  
11 March 4, 2008. (AR 260). Plaintiff had mild pain on flexion and  
12 Achilles sensitivity. (AR 261). Plaintiff did not show up to his  
13 podiatry appointment with Dr. Bloch on March 25, 2008. (AR 256). On  
14 April 11, 2008, Plaintiff had foot x-rays taken that showed a tendon  
15 spur and a metallic object likely left from a surgery. (AR 257-58).

16

17      Over two years later, Plaintiff visited UCLA Medical Center for an  
18 orthopedic evaluation on July 21, 2010. (AR 337). Plaintiff noted  
19 being "ok - pain-wise." (Id.). Plaintiff was referred to Gary Briskin,  
20 DPM. (Id.). On August 9, 2010, Plaintiff again visited UCLA. (AR  
21 336). Plaintiff said he had been bike riding for exercise and mentioned  
22 that he had scheduled an upcoming surgery with Dr. Briskin. (Id.).

23

24      On August 20, 2010, Plaintiff saw Dr. Gary Briskin for Achilles  
25 tendon surgery and removal of spurring. (AR 386). Dr. Briskin said the  
26 surgery had "excellent results". (AR 378). On September 21, 2010,  
27 Plaintiff was reported as having excellent strength. (AR 382) On  
28 October 26, 2010, Dr. Briskin reported that Plaintiff's level of walking

1 had increased significantly since the surgery. (AR 380). Plaintiff was  
2 also referred to physical therapy. (AR 376). Over the course of six  
3 weeks, Plaintiff's weight bearing improved and he went from wearing a  
4 boot as needed for walking to wearing normal shoe gear, although he  
5 reported pain. (AR 374-77). On November 30, 2010, Plaintiff was  
6 ordered to be "more aggressive with stretching" and to use foot  
7 orthotics for stabilization. (AR 379). Plaintiff's last visit with Dr.  
8 Briskin was December 28, 2010. (AR 378). Plaintiff reported pain in  
9 the Achilles area, but there was no fluid. (Id.). Plaintiff was  
10 assessed with inflammation. (Id.).

11  
12 In February 2011, Plaintiff reported to his psychiatrist that he  
13 had "mixed feelings re:attempting to work with Dad part-time." (AR 355).  
14 Plaintiff was bike riding and reported that his foot was feeling better.  
15 (AR 355). Plaintiff still complained of pain but only took over the  
16 counter medication for relief. (Id.). In March of 2011, Plaintiff  
17 reported that he was bike riding a few times a week depending on the  
18 weather. (AR 354).

19  
20 **2. Mental Condition**

21  
22 On June 6, 2007, Plaintiff had a consultation with Elva Ruth  
23 Mezquita, M.D. and was approved for twenty treatment sessions. (AR  
24 269). Dr. Mezquita initially diagnosed Plaintiff with dissociative  
25 disorder, but she later changed her diagnosis to paranoid state. (AR  
26 365-66). On October 23 2007, Dr. Mezquita noted that Plaintiff smelled  
27 of alcohol on exam. (AR 364). Plaintiff had not been taking his  
28 medication for six weeks and was drinking "heavily." (Id.). Plaintiff

1 alleged hearing "a lot of noise" in his head and said he had become  
2 suspicious of his wife and kids. (Id.). Plaintiff also admitted to  
3 drinking at night, for help sleeping. (Id.). Plaintiff then quit  
4 therapy and did not return for over a year. (Id.). On August 22, 2008,  
5 Plaintiff returned to visit Dr. Mezquita. (AR 364). Plaintiff did not  
6 explain why he stopped seeing her for mental evaluations. (Id.).  
7 Plaintiff claimed to be anxious and obsessive. (Id.).  
8

9 On December 21, 2009, Plaintiff visited Gelbart and Associates  
10 Psychological Services for a psychiatric consultation. (AR 280-283).  
11 Plaintiff alleged depression, panic attack, "trust issues," paranoia,  
12 auditory hallucinations, suicidal thoughts and insomnia. (Id.).  
13 Plaintiff stated that he sometimes drank two beers at a time and he  
14 smoked marijuana from "time to time." (Id.). Plaintiff admitted that  
15 three years previously he was an alcoholic. (Id.). Plaintiff also  
16 stated that he had a job, "but [could not] leave the house." (Id.).  
17 On exam he was appropriately dressed and groomed, able to maintain eye  
18 contact and could relate well. (Id.) Plaintiff was also described as  
19 depressed, anxious and having limited insight. (Id.). The diagnosis  
20 was psychosis and Plaintiff was given medication. (Id.).  
21

22 Plaintiff returned in January 2010 for further psychiatric  
23 treatment. (AR 283). Plaintiff continued to report paranoia and the  
24 inability to leave the house, but stated that his medications were  
25 helping. (Id.) Plaintiff also admitted to a history of cocaine,  
26 mushrooms and alcohol, but denied any current abuse. (Id.). The  
27 diagnosis was polysubstance abuse. (Id.).  
28

1       On March 19, 2010, Plaintiff went to the Lake Arrowhead Treatment  
2 Center to see Michael Bishara, M.D. (AR 290). He reported stopping  
3 polysubstance abuse two weeks earlier. (Id.). However, Plaintiff was  
4 still in withdrawal. (Id.). Plaintiff was detoxing from heroin,  
5 methamphetamine and opiates. (Id.). Plaintiff failed to attend his  
6 April 19, 2010 appointment, but on April 26, 2010, Plaintiff stated that  
7 the medications were helping his mental health. (AR 294).

8

9       On May 7, 2010, Plaintiff again failed to attend an appointment  
10 with Dr. Bishara. (AR 352). On May 25, 2010, Plaintiff alleged body  
11 aches and sweats. (Id.). On June 10, 2010, Plaintiff relapsed,  
12 allegedly due to stress. (AR 351). Plaintiff finished his  
13 rehabilitation program, having been sober for thirty days, on July 7,  
14 2010. (AR 350).

15

16       Plaintiff began visiting Beatrice Brody, M.D., for mental treatment  
17 on July 27. (AR 362). Plaintiff alleged that his drinking had  
18 increased as he began having business problems. (Id.). Plaintiff  
19 reported that he had moved out of his family's home and became involved  
20 with people who used drugs, which is allegedly when he began using.  
21 (Id.). Later that month, Plaintiff met with Dr. Brody and alleged that  
22 he felt "pressured" at home. (AR 361). Plaintiff also stated that he  
23 was playing and interacting with his younger children, but maintained  
24 that he was uncomfortable around people. (Id.). Plaintiff alleged that  
25 he could not drive and stated he spent all day watching TV and playing  
26 video games. (Id.). In September 2010, Plaintiff again reported to  
27 Dr. Brody. (AR 360). Plaintiff continued to allege that he felt  
28

uncomfortable going outside and that wearing a cap made him feel secure.  
(Id.).

In October 2010, Plaintiff reported that he was able to go to his son's football game, but the voices bothered him. (AR 359). Plaintiff also reported going to the store with his father, although he went midday to avoid crowds. (Id.). In November 2010, Plaintiff told Dr. Brody that he had to install a Breathalyzer in his truck because of a court order. (AR 358). Plaintiff was also ordered to enter a class to control alcoholism because of a DUI in 2009. (Id.). Plaintiff alleged anxiety. (Id.). In December of 2011, Plaintiff again stated that he felt uncomfortable around others and trapped at home. (AR 357). He also stated that he did not speak at his Narcotics Anonymous meetings unless "prodded." (Id.).

From October 6, 2010 to November 19, 2010, Plaintiff also saw psychiatrist Michael Towlin, M.D. (AR 344-349). Dr. Towlin diagnosed Plaintiff as schizoaffective. (AR 347). Plaintiff told Dr. Towlin that he had not drank alcohol "for years." (AR 346). Dr. Towlin prescribed medication, supportive therapy, and encouraged Plaintiff to exercise. (AR 348). Plaintiff was described as anxious, nervous and "psychologically unstable." (Id.).

**B. Examining Physician's Opinion**

On May 9, 2009, at the request of the Agency, Plaintiff saw Hiruy Gessesse, M.D. for a complete psychiatric evaluation. (AR 308-312). Plaintiff told Dr. Gessesse that his psychotic symptoms were possibly

1 due to his addiction to painkillers. (AR 309). Plaintiff stated that  
2 he had previously abused painkillers, alcohol and marijuana, but he also  
3 stated that he was sixty days clean at the time and acknowledged that  
4 he was in a rehabilitation program. (Id.). Plaintiff said that he was  
5 no longer hearing voices and stated that his medications were "really  
6 helping." (Id.).

7  
8 Dr. Gessesse found that Plaintiff was cooperative, maintained good  
9 eye contact and was "able to establish rapport with the examiner." (AR  
10 310). Plaintiff's thought processes were "concrete", "linear" and  
11 "goal directed." (Id.). Plaintiff also "exhibited no evidence of  
12 auditory or visual hallucinations, delusions or illusions." (Id.). Dr.  
13 Gessesse diagnosed Plaintiff with substance induced psychosis and  
14 polysubstance dependance. (AR 311). Dr. Gessesse also found that  
15 Plaintiff could "maintain regular attendance and perform work  
16 consistently" and "complete a normal workday and workweek." (Id.).  
17 Further, because Plaintiff could accept instruction during the  
18 evaluation, Dr. Gessesse found that he could accept instruction from a  
19 supervisor. (Id.). Similarly, Dr. Gessesse found that because  
20 Plaintiff could interact adequately throughout the evaluation, he could  
21 interact adequately with coworkers and the public. (Id.).

22  
23 **C. Reviewing Physician's Opinion**

24  
25 On May 18, 2010, State Agency Psychiatrist C. Dudley, M.D. reviewed  
26 Plaintiff's mental evidence. (AR 315). Dr. Dudley found that "although  
27 [Plaintiff] has some mental difficulties, they do not prevent him from  
28 performing all types of work activities." (AR 325). Dr. Dudley

1 determined that Plaintiff had the impairment of polysubstance  
2 dependence. (AR 321). Dr. Dudley also found that Plaintiff could  
3 "understand, remember, and carry out simple work-related tasks" and had  
4 "significant limitations in the ability to . . . relate to others, or  
5 otherwise adapt to the requirements of the normal workplace." (AR 328).

6

7 State agency consultant S. Choo reviewed Plaintiff's physical  
8 history on May 18, 2010. (AR 334). S. Choo found that although  
9 Plaintiff experienced some limitations from his ankle impairment, "they  
10 [did] not prevent him from performing all types of work activities."  
11 (AR 333).

12

13 **D. Plaintiff's Testimony**

14

15 In his application for DIB, Plaintiff alleged disability due to  
16 mental illness and Achilles tendon injury. (AR 177). Plaintiff alleged  
17 that he was "hearing voices" and "losing touch with reality" and that  
18 he could not walk without extreme pain. (Id.). Furthermore, medication  
19 did not help him and that he could no longer function with his family.  
20 (Id.).

21

22 In Plaintiff's function report, Plaintiff alleged that on "good  
23 days" he could look for work and run errands, but that he still needed  
24 time to be alone. (AR 205). On "bad days" he could not get out of bed,  
25 would be "frozen in [his] room," or would "drive all day and night" and  
26 felt angry and depressed. (Id.). Plaintiff worked with computers and  
27 electronics daily and would regularly do so with friends. (AR 209).

1 Plaintiff also reported that walking was painful and that in order to  
2 walk, he had to take short breaks. (AR 210).

3

4 At his hearing in front of the ALJ, Plaintiff testified that he  
5 became unable to work mainly because of his mental health issues. (AR  
6 73). According to Plaintiff, his mental condition predated his  
7 substance abuse problems. (AR 74). Plaintiff alleged that he first  
8 became addicted to painkillers following a snowboarding accident. (AR  
9 69). Plaintiff stated that he had never did mushrooms, but had used  
10 heroin. (Id.). Plaintiff further testified that he completed  
11 rehabilitation for substance abuse and that he had not used illegal  
12 drugs or alcohol for over a year. (AR 69-70). In regard to Plaintiff's  
13 symptoms, Plaintiff testified that he had daily panic attacks, could not  
14 leave the house because of agoraphobia and could not be around crowds  
15 or loud things. (Id.). At the time, Plaintiff said his medication kept  
16 him "even keel to a point." (AR 83).

17

18 Plaintiff testified that he could drive and attended his son's  
19 football games once a month. (AR 76-77). Plaintiff also rode his  
20 bicycle to the beach for exercise, but spent most days "moping around  
21 the house," doing some cleaning and playing videogames. (AR 81-82).  
22 Finally, Plaintiff did some construction-related work for his father,  
23 such as planning and bidding, in 2008. (AR 68, 75).

24

25 **E. Vocational Expert Testimony**

26

27 Vocational Expert ("VE") Gail Maron testified at Plaintiff's  
28 hearing. (AR 84). The ALJ asked the VE to consider a person who was

1 Plaintiff's age, with a high school education and the same past work  
2 experience as Plaintiff, limited to light exertion and nonexertionally  
3 limited work that involves simple, repetitive tasks for psychiatric  
4 reasons, no public contact, and no more than occasional peer contact.  
5 (AR 87). The VE testified that with those limitations, a individual  
6 would not be able to perform Plaintiff's past work. (Id.). However,  
7 the VE also stated testified that other work was available nationally  
8 to a person with such limitations, including housekeeper, semi-automatic  
9 machine operator, table worker, and inspector. (AR 88).

10  
11 **IV.**

12 **THE FIVE-STEP SEQUENTIAL EVALUATION PROCESS**

13  
14 To qualify for disability benefits, a claimant must demonstrate  
15 a medically determinable physical or mental impairment that prevents him  
16 from engaging in substantial gainful activity<sup>1</sup> and that is expected to  
17 result in death or to last for a continuous period of at least twelve  
18 months. Reddick v. Chater, 157 F.3d 715, 721 (9th Cir. 1998) (citing  
19 42 U.S.C. § 423(d)(1)(A)). The impairment must render the claimant  
20 incapable of performing the work he previously performed and incapable  
21 of performing any other substantial gainful employment that exists in  
22 the national economy. Tackett v. Apfel, 180 F.3d 1094, 1098 (9th Cir.  
23 1999) (citing 42 U.S.C. § 423(d)(2)(A)).

24  
25  
26  
27 <sup>1</sup> Substantial gainful activity means work that involves doing  
28 significant and productive physical or mental duties and is done for pay  
or profit. See 20 C.F.R. §§ 404.1510, 416.910.

1       To decide if a claimant is entitled to benefits, an ALJ conducts  
2 a five-step inquiry. 20 C.F.R. §§ 404.1520, 416.920. The steps are:

- 4             (1) Is the claimant presently engaged in substantial gainful  
5 activity? If so, the claimant is found not disabled.  
6             If not, proceed to step two.
- 7             (2) Is the claimant's impairment severe? If not, the  
8 claimant is found not disabled. If so, proceed to step  
9 three.
- 10            (3) Does the claimant's impairment meet or equal one of the  
11 specific impairments described in 20 C.F.R. Part 404,  
12 Subpart P, Appendix 1? If so, the claimant is found  
13 disabled. If not, proceed to step four.
- 14            (4) Is the claimant capable of performing his past work? If  
15 so, the claimant is found not disabled. If not, proceed  
16 to step five.
- 17            (5) Is the claimant able to do any other work? If not, the  
18 claimant is found disabled. If so, the claimant is  
19 found not disabled.

20  
21 Tackett, 180 F.3d at 1098-99; see also Bustamante v. Massanari, 262 F.3d  
22 949, 953-54 (9th Cir. 2001) (citations omitted); 20 C.F.R. §§  
23 404.1520(b)-(g)(1) & 416.920(b)-(g)(1).

24  
25       The claimant has the burden of proof at steps one through four, and  
26 the Commissioner has the burden of proof at step five. Bustamante, 262  
27 F.3d at 953-54. Additionally, the ALJ has an affirmative duty to assist  
28 the claimant in developing the record at every step of the inquiry. Id.

1 at 954. If, at step four, the claimant meets his burden of establishing  
2 an inability to perform past work, the Commissioner must show that the  
3 claimant can perform some other work that exists in "significant  
4 numbers" in the national economy, taking into account the claimant's  
5 residual functional capacity<sup>2</sup> ("RFC"), age, education, and work  
6 experience. Tackett, 180 F.3d at 1098, 1100; Reddick, 157 F.3d at 721;  
7 20 C.F.R. §§ 404.1520(g)(1), 416.920(g)(1). The Commissioner may do so  
8 by the testimony of a vocational expert ("VE") or by reference to the  
9 Medical-Vocational Guidelines appearing in 20 C.F.R. Part 404, Subpart  
10 P, Appendix 2 (commonly known as "the Grids"). Osenbrock v. Apfel, 240  
11 F.3d 1157, 1162 (9th Cir. 2001). When a claimant has both exertional  
12 (strength-related) and non-exertional limitations, the Grids are  
13 inapplicable and the ALJ must take the testimony of a vocational expert.  
14 Moore v. Apfel, 216 F.3d 864, 869 (9th Cir. 2000) (citing Burkhart v.  
15 Bowen, 856 F.2d 1335, 1340 (9th Cir. 1988)).

v.

## THE ALJ'S DECISION

20 The ALJ employed the five-step sequential evaluation process and  
21 concluded, at step one, that Plaintiff had not engaged in substantial  
22 gainful employment since September 1, 2007. (AR 22). At step two, the  
23 ALJ found that Plaintiff had the severe impairments of panic disorder,  
24 status post left Achilles tendon repair and a history of polysubstance  
25 abuse. (Id.). At step three, the ALJ found that Plaintiff did not have

<sup>2</sup> Residual functional capacity is "the most [one] can still do despite [his] limitations" and represents an "assessment based upon all of the relevant evidence." 20 C.F.R. §§ 404.1545(a), 416.945(a).

1 an impairment or combination of impairments that met or medically  
2 equaled one of the listed impairments in 20 CFR Part 404, Subpart P,  
3 Appendix 1. (AR 27).

4

5 The ALJ then found that Plaintiff had the residual functional  
6 capacity to perform light work as defined in 20 C.F.R. § 404.1567(b)  
7 "except he is limited to simple, repetitive tasks; he is limited to  
8 jobs with no public contact; and he is limited to occasional interaction  
9 with peers." (AR 25). Based on the VE's testimony, the ALJ found that  
10 Plaintiff was unable to perform any past relevant work. (AR 37).  
11 However, at step five, the ALJ found that Plaintiff could perform jobs  
12 that exist in significant numbers in the national economy. (AR 38).  
13 Accordingly, the ALJ found that Plaintiff was not disabled within the  
14 meaning of the Social Security Act. (AR 39).

15

16 VI.

17 STANDARD OF REVIEW

18

19 Under 42 U.S.C. § 405(g), a district court may review the  
20 Commissioner's decision to deny benefits. The court may set aside the  
21 Commissioner's decision when the ALJ's findings are based on legal error  
22 or are not supported by substantial evidence in the record as a whole.  
23 Aukland v. Massanari, 257 F.3d 1033, 1035 (9th Cir. 2001) (citing  
24 Tackett, 180 F.3d at 1097); Smolen v. Chater, 80 F.3d 1273, 1279 (9th  
25 Cir. 1996) (citing Fair v. Bowen, 885 F.2d 597, 601 (9th Cir. 1989)).

26

27 "Substantial evidence is more than a scintilla, but less than a  
28 preponderance." Reddick, 157 F.3d at 720 (citing Jamerson v. Chater,

1 112 F.3d 1064, 1066 (9th Cir. 1997)). It is "relevant evidence which  
2 a reasonable person might accept as adequate to support a conclusion."  
3 Id. (citing Jamerson, 112 F.3d at 1066; Smolen, 80 F.3d at 1279). To  
4 determine whether substantial evidence supports a finding, the court  
5 must "'consider the record as a whole, weighing both evidence that  
6 supports and evidence that detracts from the [Commissioner's]  
7 conclusion.'" Auckland, 257 F.3d at 1035 (quoting Penny v. Sullivan, 2  
8 F.3d 953, 956 (9th Cir. 1993)). If the evidence can reasonably support  
9 either affirming or reversing that conclusion, the court may not  
10 substitute its judgment for that of the Commissioner. Reddick, 157 F.3d  
11 at 720-21 (citing Flaten v. Sec'y, 44 F.3d 1453, 1457 (9th Cir. 1995)).  
12

13 **VII.**

14 **DISCUSSION**

15  
16 Plaintiff contends that the ALJ erred for three reasons. First,  
17 Plaintiff alleges that the ALJ failed to properly assess his subjective  
18 complaints and credibility. (Memorandum in Support of Plaintiff's  
19 Complaint ("MSPC") at 6). Second, Plaintiff argues that the ALJ failed  
20 to properly consider all of the relevant medical evidence. (*Id.* at 2-  
21 3). Specifically, Plaintiff maintains that the ALJ erred in failing to  
22 discuss Dr. Brisken's treatment records from August 2011 to December  
23 2011. (*Id.* at 3). Third, Plaintiff contends that the ALJ failed to  
24 find Plaintiff had the severe mental impairments of dissociative  
25 disorder, paranoid state, psychosis and schizoaffective disorder, and  
26 therefore erred at step two of the Five-Step evaluation process. (*Id.*  
27 at 5). However, the Court disagrees in regard to all three claims. For  
28

1 the reasons discussed below, the Court finds that the ALJ's decision  
2 must be AFFIRMED.

3

4 **A. The ALJ Cited Clear And Convincing Reasons For Finding Plaintiff's**

5 **Subjective Testimony Less Than Fully Credible**

6

7 Plaintiff contends that the ALJ erred in his evaluation of  
8 Plaintiff's credibility by failing to cite clear and convincing reasons  
9 for finding Plaintiff less than fully credible. (MSPC at 6). Further,  
10 Plaintiff argues that his statements regarding his limitations are  
11 consistent with the complete record. (*Id.*). However, the Court  
12 disagrees. The ALJ properly cited clear and convincing reasons for  
13 rejecting Plaintiff's testimony.

14

15 When assessing the credibility of a claimant, the ALJ must engage  
16 in a two step analysis. Molina v. Astrue, 674 F.3d 1104, 1112 (9th Cir.  
17 2012). First, the ALJ must determine if there is medical evidence of  
18 an impairment that could reasonably produce the symptoms alleged.  
19 (*Id.*). Then, if there is, in order to reject the testimony, the ALJ  
20 must make specific credibility findings. (*Id.*). In assessing the  
21 claimant's testimony, the ALJ may use "ordinary techniques of  
22 credibility evaluation." Turner, 613 F.3d at 1224 (internal quotations  
23 omitted). The ALJ may also consider any inconsistencies in the  
24 claimant's conduct and any inadequately or unexplained failure to pursue  
25 treatment or follow treatment. Tommasetti v. Astrue, 533 F.3d 1035,  
26 1039 (9th Cir. 2008). Additionally, the ALJ may discredit the  
27 claimant's testimony where his normal activities can transfer to the  
28

1 work setting. Morgan v. Comm'r of Soc. Sec. Admin., 169 F.3d 595, 600  
2 (9th Cir. 1999).

3  
4 Here, there was medical evidence of an underlying impairment.  
5 However, the ALJ gave specific, clear and convincing reasons to reject  
6 Plaintiff's testimony about the severity of his symptoms. The ALJ  
7 reviewed the record and cited to numerous inconsistencies in Plaintiff's  
8 testimony and the record regarding Plaintiff's substance abuse and his  
9 physical and mental impairments. (AR 31-36).

10  
11 Regarding Plaintiff's substance abuse, the ALJ noted that at the  
12 hearing, Plaintiff testified that he had a bad foot and took pain  
13 medications, but denied the use of illegal substances or alcohol in over  
14 a year and "expressly denied any substance abuse in 2010." (AR 31, 70).  
15 However, later in the hearing, Plaintiff testified that he had a history  
16 of substance abuse and that "six to seven months" prior, he "may have  
17 had a beer." (AR 31, 81). The ALJ further pointed out that Plaintiff  
18 testified that he was in rehabilitation for pain medication addiction,  
19 yet the medical records included references to the "ongoing use of  
20 substances, including methamphetamine, cocaine, heroin, mushrooms and  
21 alcohol." (AR 31, 285-302). The ALJ also noted that in October 2010,  
22 Plaintiff told Dr. Brody that he had been drinking and was entered into  
23 a court-ordered class for treatment of his alcoholism and had a  
24 Breathalyzer installed in his truck. (AR 33, 358).

25  
26 Additionally, the ALJ noted that Plaintiff continually minimized  
27 his substance abuse problems when speaking with his treating physicians  
28 and examiners, including the ALJ himself. (AR 33). Specifically, when

1 starting treatment with Dr. Tolwin in 2010, Plaintiff "failed to mention  
2 his history of polysubstance abuse." (AR 33, 336-349). The ALJ noted  
3 that "this repeated failure to provide candid information about his  
4 polysubstance abuse history significantly and adversely affects  
5 [Plaintiff's] credibility." (AR 33).

6

7 The ALJ also cited clear and convincing reasons for rejecting  
8 Plaintiff's testimony regarding his physical limitations and his  
9 inability to work. (AR 33). Plaintiff testified that he could not  
10 work, yet also testified that he "helped" his father with construction  
11 projects. Plaintiff explicitly maintained the help he did for his  
12 father was not "work". (AR 33, 68). However, the ALJ noted that he  
13 reported to his treating psychiatrist in December 2008, that he was  
14 "working" for his father and that he "had a job". (AR 33, 281).  
15 Plaintiff also told Dr. Brody that he could no longer drive. (AR 361).  
16 However, the ALJ noted that Plaintiff's wife and other reports show that  
17 he was driving, including Plaintiff's testimony that he would sometimes  
18 drive "all day and night." (AR 34, 205). Similarly, in Plaintiff's  
19 function report to the State Agency, he stated that he did not do any  
20 chores, only his wife did. (AR 34, 207). Again the ALJ pointed to  
21 reports from Dr. Brody that showed Plaintiff was "doing laundry, picking  
22 up around the house, and doing dishes." (AR 34, 358). The ALJ also  
23 noted that Plaintiff was "fixing things around the house, running  
24 errands with his father, cleaning up the children's toys and cleaning  
25 up the kitchen after dinner." (AR 34, 356). Further, Plaintiff told  
26 health care providers that he could not work because of his foot pain.  
27 (AR 32, 337). However, Plaintiff testified at the hearing and told  
28 treating doctors that he was riding his bike for exercise and going to

1 the gym, undermining his claim that his foot pain prevented normal  
2 movement. (AR 33, 354-55).

3

4 The ALJ also noted inconsistencies in Plaintiff's testimony  
5 regarding mental limitations. (AR 35). Plaintiff testified that he  
6 could not work because his agoraphobia prevented him from showing up to  
7 a job consistently. (AR 73). However, the ALJ noted that Plaintiff was  
8 able to attend his son's football games, run errands, go to the gym, go  
9 on drives, and go for bike rides to the beach. (AR 35, 359) Although  
10 Plaintiff repeatedly alleged not being able to leave the house, the ALJ  
11 found that much of Plaintiff's activities took him to public places.  
12 Further, the ALJ noted that no psychiatrist had ever diagnosed Plaintiff  
13 with agoraphobia. (AR 35). The ALJ also noted that, Plaintiff told a  
14 consulting psychiatrist that his auditory hallucinations were secondary  
15 to his pain medication addiction. (Id.). However, at the hearing,  
16 Plaintiff alleged that his mental health problems predated his substance  
17 abuse. (AR 74). Despite this conflicting testimony, the ALJ observed  
18 that Plaintiff made "no offer of proof to explain why [Plaintiff] would  
19 misrepresent his mental health condition to his treating source  
20 providers." (AR 35).

21

22 Further, Plaintiff argues that the ALJ could not make a complete  
23 credibility finding without considering treating records from Dr.  
24 Briskin that show a second foot surgery and additional limitations.  
25 (Plaintiff's Reply ("Pl's Reply") at 6). However, the failure to  
26 discuss these records is harmless error. "An ALJ's error is harmless  
27 when it is inconsequential to the ultimate nondisability determination."  
28 Molina, 674 F.3d at 1115 (internal citations and quotations omitted).

1 Here, the ALJ cited many inconsistencies in the record, regarding both  
2 Plaintiff's physical and mental limitations. Although the ALJ may have  
3 erred in stating that there was no medical evidence of a second surgery,  
4 the severity of the pain that Plaintiff alleged is still undermined by  
5 Plaintiff's active lifestyle and his reports of pain improvement to  
6 other treating doctors. (AR 346, 354-55). Although the reports from  
7 Dr. Briskin evidence an underlying impairment, the ALJ would have still  
8 found Plaintiff less than fully credible because the record simply does  
9 not support the severity of pain alleged.

10  
11 The Court finds that the discrepancies between the record and  
12 Plaintiff's testimony constitutes a clear and convincing reason to  
13 discount Plaintiff's testimony. Accordingly, the ALJ provided clear and  
14 convincing reasons for finding Plaintiff less than fully credible.  
15

16 **B. The ALJ Properly Considered The Relevant Medical Evidence**

17  
18 Plaintiff contends that the ALJ erred in failing to properly  
19 consider all of the relevant medical evidence. Specifically, Plaintiff  
20 argues that the ALJ erred by failing to discuss Dr. Briskin's treatment  
21 records, as well as physical therapy records, from August 2010 to  
22 December 2010. Plaintiff states that these records are significant and  
23 probative evidence of Plaintiff's left foot condition and the resulting  
24 limitations. The Court disagrees.  
25

26 Social Security regulations require the ALJ to consider all the  
27 relevant medical evidence when determining whether a claimant is  
28 disabled. 20 C.F.R. §§ 404.1520(b), 416.927(c). Medical reports from

1 licensed medical physicians are one acceptable source of evidence. 20  
 2 C.F.R. § 1513(a), (b). When considering medical reports, the ALJ must  
 3 give the greatest weight to the opinion of the claimant's treating  
 4 physicians. Turner v. Comm'r of Soc. Sec. Admin., 613 F.3d 1217, 1222  
 5 (9th Cir. 2010). If an ALJ rejects or ignores a treating physician's  
 6 opinion, the ALJ must give specific reasons for doing so. Taylor v.  
 7 Comm'r of Soc. Sec. Admin., 659 F.3d 1228, 1234 (9th Cir. 2011).  
 8 Further, while the ALJ is required to develop and interpret the medical  
 9 record, the ALJ is not required to discuss every piece of evidence.  
 10 Howard ex rel. Wolff v. Barnhart, 341 F.3d 1006, 1012 (9th Cir. 2003).  
 11

12 Here, the ALJ considered all of the relevant medical evidence and  
 13 it is consistent with his non-disability determination. The ALJ  
 14 discussed Plaintiff's left foot problems in his decision in detail. The  
 15 ALJ noted Plaintiff's first surgery in 2006 and discussed Plaintiff's  
 16 visit to the doctor in 2007. (AR 22, 26, 251). The ALJ discussed  
 17 Plaintiff's X-Ray from 2008 showing the Achilles tendon spur and a  
 18 metallic object leftover from the previous surgery. (AR 23, 257-58).  
 19 The ALJ also made note of the July 2010 report from UCLA, where  
 20 Plaintiff reported that he was "ok pain-wise." (AR 32). The ALJ also  
 21 discussed Plaintiff's August 2010 complaints that he could only stand  
 22 ten-fifteen minutes and had pain in his heel and big toe. (AR 24, 305).

23  
 24 The ALJ further noted that Plaintiff alleged undergoing a second  
 25 surgery in late 2010 and that he reported that it improved his pain  
 26 condition. (AR 25, 32, 346). The ALJ also noted that Plaintiff was  
 27 doing physical therapy for his foot in October of 2010. (AR 25, 358).  
 28 Furthermore, the ALJ saw from psychiatric records that by February of

1       2011 Plaintiff was again riding his bike for exercise and that by March  
2       of 2011 Plaintiff was only taking over-the-counter medication for pain.  
3       (AR 26). This suggests that Plaintiff's surgery and physical therapy  
4       were effective and although Plaintiff alleged disabling foot pain, he  
5       was not living a sedentary lifestyle.

6  
7       Plaintiff further argues that the ALJ erred by stating that there  
8       was no objective evidence of a second surgery or a changed foot  
9       condition that would lead to Plaintiff's complaints of pain, yet this  
10      evidence was provided in exhibit 18f (AR 373-84) in Dr. Briskin's  
11      report. (MSPC at 3) However, The ALJ's omission of this evidence is at  
12      most harmless error because the additional records not discussed by the  
13      ALJ would not affect the ultimate nondisability determination. Molina,  
14      674 F.3d at 1115.

15  
16       Plaintiff is correct in stating that the August 2010 to December  
17       2010 records from Dr. Briskin show that Plaintiff did have objective  
18       evidence of further limitations at that time. However, this does not  
19       change the fact that the ALJ considered other records from the same time  
20       period in which Plaintiff says the surgery helped with his pain. (AR  
21       346). Nor does the failure to discuss Dr. Briskin's records change the  
22       fact that only months after the surgery Plaintiff reported to other  
23       treating doctors that he was doing better and was active again. (AR 354-  
24       56). Therefore, while the ALJ may have failed to discuss this evidence  
25       directly, he still recognized that there was another surgery from  
26       reading the psychiatric records and also cited evidence showing  
27       Plaintiff's improvement.

1 Furthermore, rather than undermine the ALJ's decision, the physical  
2 therapy records that were omitted from the ALJ's discussion support the  
3 nondisability determination. The physical therapy records from August  
4 2010 to December 2010 show that the therapist was hoping for recovery  
5 in six to eight weeks, that the surgery results were "excellent," that  
6 Plaintiff initially could walk with a boot, but returned to normal  
7 footwear, and that although Plaintiff reported having a limited range  
8 of motion and disabling pain, aggressive stretching and exercise was  
9 prescribed. (AR 374-77). The records also show that Dr. Briskin noted  
10 Plaintiff's walking had increased significantly since the surgery, which  
11 establishes that Plaintiff was better after the surgery than before.  
12 (AR 380).

13

14 Further, the records that the ALJ failed to discuss do not show  
15 that Plaintiff's left foot impairment meets the C.F.R. requirements for  
16 a Listing. To meet a Listing for a Musculoskeletal impairment, such as  
17 Plaintiff's left foot impairment, a claimant must demonstrate an  
18 inability to ambulate effectively. (20 C.F.R. § 404 App. 1). The  
19 inability to ambulate effectively is an "extreme limitation of the  
20 ability to walk," meaning that the impairment "interferes very seriously  
21 with the individual's ability to independently initiate, sustain, or  
22 complete activities." (Id.). Although the records from Dr. Briskin and  
23 the physical therapy reports show that Plaintiff did have a second  
24 surgery and was complaining of pain, they do not show that Plaintiff was  
25 so limited in his ability to walk that he could not "independently  
26 initiate, sustain or complete activities." Furthermore, records that  
27 the ALJ cited from the same time period show that Plaintiff was active  
28 on his own. Therefore, even taking into account the evidence from the

1 records the ALJ did not discuss, Plaintiff does not meet the Listing  
2 criteria.

3

4 The ALJ thoroughly considered all of the relevant evidence from the  
5 period of alleged disability. If failing to discuss the August to  
6 December 2010 records from Dr. Briskin and physical therapy was error,  
7 it was at most harmless error, because those records would not change  
8 the ALJ's ultimate nondisability determination.

9

10 **C. The ALJ's Step-Two Finding That Plaintiff Had The Severe Mental**  
11 **Impairment Of Panic Disorder, Polysubstance Abuse and Status Post**  
12 **Left Achilles Tendon Repair Is Complete And Supported By**  
13 **Substantial Evidence**

14

15 Plaintiff's final contention is that the ALJ erred in failing to  
16 find that Plaintiff had the severe mental impairments of dissociative  
17 disorder, paranoid state, psychosis, and schizoaffective disorder.  
18 (MSPC at 5-6). Further, Plaintiff argues that the ALJ erred in failing  
19 to include limitations from those impairments in Plaintiff's RFC. (Id.  
20 at 6). Plaintiff further maintains that the ALJ specifically failed to  
21 consider how these additional mental impairments led to Plaintiff's  
22 inability to consistently show up to work. (Pl's Reply at 4). For the  
23 reasons stated below, the Court finds that the ALJ's step two finding  
24 of Plaintiff's mental impairments and his subsequent finding of  
25 Plaintiff's limitations are complete and supported by substantial  
26 evidence.

At step two of the five-step evaluation process, it is Plaintiff's burden to show that his impairments are severe. Molina, 675 F.3d at 1110. An impairment is severe if it significantly limits the claimant's physical or mental ability to do basic work. 42 C.F.R. § 404.1520(c). Where the ALJ finds a severe medically determinable impairment at step two of the sequential analysis, "all medically determinable impairments must be considered in the remaining steps of the sequential analysis." Orn v. Astrue, 495 F.3d 625, 630 (9th Cir. 2007). Finally, an ALJ must consider all limitations that are supported by substantial evidence. Osenbrock, 240 F.3d at 1165.

Here, the ALJ thoroughly considered and discussed Plaintiff's medical records regarding his mental health. The records show infrequent visits and varying diagnoses by multiple doctors over five years, as well as a history substance abuse problems. See, eg, (AR 291-282, 344, 347, 364, 365). Although Plaintiff consistently described anxiety and social problems, as discussed above, the ALJ cited specific reasons for finding Plaintiff only partially credible. Therefore, the ALJ was not required to consider all of Plaintiff's subjective complaints regarding his limitations, such as the alleged complete inability to leave the house. Considering the record as a whole, the ALJ's findings of impairments of Panic Disorder and polysubstance abuse are supported by substantial evidence. Accordingly, the ALJ properly concluded that Plaintiff had three non-exertional limitations: Plaintiff must perform simple, repetitive tasks, may have no public contact, and may only have occasional peer interaction. (AR 28). These limitations are entirely consistent with Plaintiff's symptoms and they are supported by substantial evidence. Plaintiff has not demonstrated that if the

1 ALJ found the additional severe impairments of dissociative disorder,  
2 paranoid state, psychosis, and schizoaffective disorder, the ALJ would  
3 have found additional non-exertional limitations. Plaintiff also fails  
4 to show that these additional mental impairments were consistently found  
5 by medical providers.

6  
7 As noted above, Plaintiff does not cite to any additional  
8 limitations that would result from the additional diagnoses that he  
9 claims the ALJ ignored. Although Plaintiff contends that the ALJ failed  
10 to include Plaintiff's alleged inability to show up to work regularly  
11 as a limitation, the ALJ explicitly addressed this issue in his  
12 decision. (Pl's Reply at 5). Indeed, the ALJ gave clear and convincing  
13 reasons for rejecting Plaintiff's testimony regarding his ability to  
14 maintain a regular work schedule because of his fear of leaving the  
15 house. (AR 35). The ALJ noted that despite Plaintiff's statements that  
16 he was afraid to leave the house, Plaintiff "[attended] his son's  
17 football games, [ran] errands with his father, [went] to a gym to work  
18 out, [went] for drives, [went] on long bike rides down to the beach, and  
19 other activities that took him out of the house." (AR 35).  
20 Accordingly, the ALJ properly disregarded this additional limitation.

21 \\

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28

Finally, even if it was an error for the ALJ to not cite the other diagnoses as impairments, which it was not, it was harmless error, because all of Plaintiff's limitations were included in the RFC. Accordingly, any additional diagnosis not cited as a severe impairment would not change the ultimate nondisability determination. Therefore the ALJ did not err in his step two finding, as he made a complete finding of Plaintiff's severe impairments, and the ALJ included all the limitations supported by substantial evidence in Plaintiff's RFC.

VIII.

## CONCLUSION

Consistent with the foregoing, IT IS ORDERED that Judgment be entered AFFIRMING the decision of the Commissioner. The Clerk of the Court shall serve copies of this Order and the Judgment on counsel for both parties.

DATED: August 14, 2013

SUZANNE H. SEGAL  
UNITED STATES MAGISTRATE JUDGE

THIS MEMORANDUM IS NOT INTENDED FOR PUBLICATION IN WESTLAW,  
LEXIS OR ANY OTHER ONLINE DATABASE.